

DETAILED ACTION

Response to Amendment

1. The amendment filed 10/5/2011 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: the material added to figure 1 is not supported by the original disclosure. The location of the open wall is not supported in the original disclosure. Further, drawings may not contain text such as “wall” and “open toward wall.” The amended drawings have not been entered in the case.

Applicant is required to cancel the new matter in the reply to this Office Action.

Drawings

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the mounting bracket being open along a rear side must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet,

Art Unit: 3751

and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

3. Claims 1, 3, 7-15, 17, and 19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. Regarding Claim 1, claim language "and the mounting bracket is open along a rear side toward the wall" renders the claim indefinite. It is unclear what opening the applicant is referring to. The only opening shown in the drawings is 32, shown on the additional bracket 30, but additional bracket 30 is not the same bracket that is curved and comprises a 'conical bracket' as implied in the claim. Clarification is required.

5. Further regarding Claim, Claim 1 recites "the mounting bracket is open along a rear side toward the wall". Such recitation renders the claim indefinite because such recitation is inferentially included as part of the claimed combination of elements (wall rod, wall support, mounting bracket, and wall). Should applicant intend "the wall" to be a positive element of the claimed combination, then antecedent basis should be

Art Unit: 3751

provided therefor. If not, it is suggested that applicant adopts language such as – adapted to be—when relating claimed elements to the “wall”.

6. Claims 23, 7-15, 17, and 19 are dependent on claim 1 and are likewise indefinite.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1, 3, 7-8, 12, and 14-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over in view of US Patent Application Publication 2003/0221251 to Tse in view of USPN 5,833,192 to Buhrman.

9. Regarding Claims 1, 3, 7, and 14-15, Tse teaches a wall rod 1, and a mounting bracket 4 that comprises a lengthwise extension of the wall rod and is formed as a continuation extending the wall rod upwardly (from the position of the wall rod below 4, for example shown where reference character ‘1’ points in figure 1). The mounting bracket 4 is curved and comprises an open pipe 14 with an opening at an end/along the pipe that forms a ‘slot’. The opening/slot is formed and sized for receiving shower attachment 12, as discussed in pp [0012]. The wall bracket is ‘pivotably’ attached to the wall rod as the bracket is slidably inserted onto 2 and may pivot freely until the clamp portion 7 attaches the two components together. The bracket may pivot freely again when the button 13 is depressed to release the clamp. A longitudinal axis of the wall rod is where the bracket may pivot during operation. A centerline of the mounting

Art Unit: 3751

bracket lies in a plane that includes a longitudinal axis of the wall rod. Further, the mounting bracket 4 is open along a 'rear side toward the wall' in that it is open around the wall rod below 4.

Tse fails to show a wall support, and further fails to show a conical bracket at an end of the mounting bracket.

Burhman, however, teaches double-bent wall supports 42/44 resulting in the ability to affix the rod to a bathroom wall for use in a shower.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have included a double-bent wall support as taught by Burhman in the shower support of Tse to affix the support to a shower wall. It would have been further obvious to one having ordinary skill in the art to have modified the shape of the pipe 14 to correspond with the shape of the shower attachment being inserted into the pipe. As discussed in pp [0012] of Tse the opening is shaped to provide a frictional connection between the inserted piece and the opening. Therefore it would have been obvious to one having ordinary skill in the art to have provided the opening with conical like portion to provide a frictional fit if the shower attachment to be inserted and held by the bracket was correspondingly shaped. Further, a change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. *In re Dailey et al.*, 149 USPQ 47.

10. Regarding claim 12, as discussed supra, further the wall support and the mounting bracket 4 allow for the outlet hose to hang freely downwards between the wall rod and a wall.

Art Unit: 3751

11. Regarding Claim 8, as discussed supra, further the wall support is 'laterally opposite' the rod. Burhman teaches the double-bent wall supports 42/44 and the wall rod is at least half the diameter D of the hose H. It would have been further obvious to have made the distance at least half the diameter as claimed to allow for the hose to go behind the rod and keep it out of the way of the user.

12. The initial statement of intended use (claim 1 line 1) and all other functional limitations thereto, have been fully considered but do not appear to impose any patentably distinguishing structure over that disclosed by the modified Tse.

13. Claims 9-11, 13 17, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tse and Burhman as applied to claim 1 above and further in view of USPN 4,726,552 to Warshawsky.

14. As previously discussed, Tse discloses all of the claimed features except for a swivel bearing located in the wall support.

Warshawsky teaches a wall support 80/90, which includes a swivel bearing 140 for a shower outlet holder 60.

It would have been obvious to one of ordinary skill in the art to replace the bearing in Tse with the alternative bearing in Warshawsky because both bearings provide a rotating motion and the Warshawsky bearing allows for the mounting bracket to be connected to the top of the wall rod and prevent the mounting bracket from reaching the wall. Tse as now modified teaches a stepped/indexed swivel motion as claimed.

Art Unit: 3751

15. Regarding Claims 13 and 19, as previously discussed, further Tse fails to teach an additional bracket located on the wall rod, wherein the additional bracket swivels around the wall rod. The examiner takes official notice that it would have been obvious to one having ordinary skill in the art at the time of the invention to have provided an additional bracket on the wall rod to provide increased support between the wall rod and the wall. It would have been further obvious to have provided this support with a swivel bearing as taught by Warshawsky for the reasons discussed above. The brackets are adjustable in height as the entire wall bracket system is capable of being moved up and down in height and mounted at various points on a wall.

Response to Arguments

15. Applicant's arguments filed 10/5/2011 have been fully considered but they are not persuasive.

16. At page 5 the applicant has asserted that the examiner has stated that the mounting bracket being open along the rear side is inferentially included. It is respectfully submitted that the examiner has not stated such. The wall is inferentially included, not the 'open' rear side of the bracket.

17. Applicant has further asserted at page 5 that clear antecedent basis for the wall exists in the preamble. The wall is functionally recited in the preamble, however the applicant has failed to structurally claim the wall. This is why the wall is inferentially included.

18. Applicant has further asserted at page 5 that the aspect of the mounting bracket being open along a rear side toward the wall is illustrated in the drawings. However, the

Art Unit: 3751

examiner respectfully disagrees. The mounting bracket does not show a hole or opening in the drawings and is not described like so in the specification. The applicant appears to be attempting to define a special meaning to the word "open".

19. Applicant has asserted at page 7 that there is no discussion in the examiner's action to explain how elements are not seen in the drawings. It is respectfully submitted that the examiner has attempted to explain to the applicant how the element of the 'open' back is not shown. Once the examiner has made an objection or a rejection, it becomes the burden of the applicant to prove otherwise.

20. At page 8 the applicant has asserted that the prior art does not provide a wall bracket that curves up from the end of a wall rod or the bracket having an open slot along the back facing the wall. This argument is not commensurate with the scope of the claims, neither of these asserted deficiencies in the prior art is recited in the claims.

21. At page 8 the applicant has asserted that Tse does not teach a wall rod as it is not attached to a wall. However, it is respectfully submitted that the entire support of Tse is attached to a wall. It is noted that "adapted to fix" is a functional recitation. A claimed structure that is "adapted to fix" need only be capable of fixing. The applicant repeats this argument at page 11.

22. Further at page 8, the applicant has asserted that Tse fails to disclose a bracket that is a lengthwise upward extension of a wall rod as claimed. It is respectfully submitted that, as discussed in the rejection above, a mounting bracket 4 that comprises a lengthwise extension of the wall rod and is formed as a continuation extending the wall rod upwardly (from the position of the wall rod below 4, for example

Art Unit: 3751

shown where reference character '1' points in figure 1). The applicant repeats this argument at pages 11 and 12-13.

23. At page 9 the applicant has asserted that Tse does not teach the applicant's mounting bracket 20 that receives the shower head at the end. This argument is not commensurate with the scope of the claims. The claims do not require a mounting bracket that receives the shower head at the end. This argument is repeated at page 11. The applicant has not claimed that the mounting bracket holds a spray device.

24. Further at page 9 the applicant asserts that Buhrman does not teach various things. It is respectfully submitted that as is clear in the rejection above, Buhrman is a teaching reference for a double-bent wall support.

25. At page 10, the applicant has asserted that even if a person randomly combined aspects from Burhman and Tse there would be no way the result would meet the aspects of claim 1. The examiner has is no way asserted that a person should randomly combine references. As discussed supra, Buhrman is a teaching reference for a double-bent wall support.

26. At page 12 the applicant has asserted that as the opening/slot of Tse is formed and sized for receiving the pipe of a shower head it can not meet the claim language of "for receiving a shower attachment". But, the pipe of a showerhead is a shower attachment. Furthermore, just because Tse teaches a pipe being received in the hole does not mean that the hole is not capable of receiving some other structure as the applicant seems to assert.

Art Unit: 3751

27. Further at page 12 the applicant has asserted that the discussion of pivotability is misplaced, it is respectfully submitted that the discussion is included for the applicant's additional information.

28. At page 13 the applicant has asserted that Burhman does not disclose a double bend as taught by the applicant's disclosure. It is respectfully submitted that Burhman need not teach the elements of the applicant's disclosure, Burhman (in combination with Tse) teaches the elements of the claims.

29. Further at page 13 the applicant has asserted that the action does not articulate why Warhowsky would be combined with Tse and Burnham. However, quoted from the rejection above:

“It would have been obvious to one of ordinary skill in the art to replace the bearing in Tse with the alternative bearing in Warshawsky because both bearings provide a rotating motion and the Warshawsky bearing allows for the mounting bracket to be connected to the top of the wall rod and prevent the mounting bracket from reaching the wall.”

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KAREN L. YOUNKINS whose telephone number is (571)270-7417. The examiner can normally be reached on Monday through Friday 7:30am to 5pm.

Art Unit: 3751

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on (571)272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/K. L. Y./
Examiner, Art Unit 3751

/Gregory L. Huson/
Supervisory Patent Examiner, Art Unit 3751